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09/712,584	11/14/2000	Daniel Arturo Delfin Farias	SJO919990173	9711

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EXAMINER

ADE, OGER GARCIA

ART UNIT	PAPER NUMBER
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3687

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1 UNITED STATES PATENT AND TRADEMARK OFFICE

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4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES
6

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8 *Ex parte* DANIEL ARTURO DELFIN FARIAS
9 and RUBEN ALBERTO WARJO ROMO
10

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12 Appeal 2009-000980
13 Application 09/712,584
14 Technology Center 3600
15

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17 Decided: August 24, 2009
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21 *Before* MURRIEL E. CRAWFORD, HUBERT C. LORIN, and
22 BIBHU R. MOHANTY, *Administrative Patent Judges*.

23
24 CRAWFORD, *Administrative Patent Judge*.
25

26
27 DECISION ON APPEAL

28
29 STATEMENT OF THE CASE

1 Appellants appeal under 35 U.S.C. § 134 (2002) from a final rejection
2 of claims 1-69. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

3 Appellants invented a replenishment management system, method,
4 and program which provides just in time delivery to an acquiring entity,
5 which may comprise a distribution center, wholesaler or any other supply
6 chain system of components or products (Spec. 1:7-11).

7 Claim 1 under appeal is further illustrative of the claimed invention as
8 follows:

9 1. A method for ordering products wherein the
10 products are supplied by a supplier to a replenishment service
11 center (RSC), wherein an acquiring entity obtains products
12 from the RSC by performing a sequence of operation
13 comprising:

14 (i) generating, by the acquiring entity, a request for a
15 quantity of products;

16 (ii) performing computer related operations to update a
17 computerized inventory database with a product record
18 including a requested quantity that the acquiring entity wants to
19 receive of the product based on the generated order;

20 (iii) performing computer related operations, by the
21 acquiring entity, to process a request from the supplier for
22 information on the requested quantity from the product record
23 in the inventory database and transmitting the requested
24 information to the supplier in response to the request;

25 (iv) performing computer related operations to process
26 information from the supplier indicating a commitment quantity
27 of a number of the products the supplier intends to ship to the
28 RSC to meet the requested quantity, wherein the supplier uses
29 the requested information to determine the commitment
30 quantity to indicate;

31 (v) performing computer related operations to update the
32 inventory database with the information received from the
33 supplier to indicate the commitment quantity;

(vi) performing computer related operations to update the inventory database from information received from the RSC indicating products shipped from the supplier for one specified product record to satisfy the commitment quantity; and
(vii) transmitting, by the acquiring entity, a pull order to the RSC to ship products to the acquiring entity that the supplier shipped to the RSC to satisfy the commitment quantity.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Johnson	US 5,712,989	Jan. 27, 1998
Graves	US H1743	Aug. 4, 1998

Pages 1-2 and 6-8 of the Specification (hereinafter “Admitted Prior Art”).

The Examiner rejected claims 1-38, 58-67, and 69 under 35 U.S.C. § 103(a) as being unpatentable over the Admitted Prior Art in view of Johnson; and rejected claims 39-57 and 68 under 35 U.S.C. § 103(a) as being unpatentable over the Admitted Prior Art in view of Johnson and Graves.

We REVERSE.

ISSUES

Did the Appellants show the Examiner erred in rejecting the subject matter of claims 1-69 as being unpatentable over a combination of the Admitted Prior Art, Johnson, and Graves, because the Examiner did not establish a proper case of prima facie obviousness?

FINDINGS OF FACT

Specification

1 Appellants invented a replenishment management system, method,
2 and program which provides just in time delivery to an acquiring entity,
3 which may comprise a distribution center, wholesaler or any other supply
4 chain system of components or products (Spec. 1:7-11).

5
6 PRINCIPLES OF LAW

7 *Obviousness*

8 Section 103 forbids issuance of a patent when “the differences
9 between the subject matter sought to be patented and the prior art are such
10 that the subject matter as a whole would have been obvious at the time the
11 invention was made to a person having ordinary skill in the art to which said
12 subject matter pertains.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406
13 (2007). The question of obviousness is resolved on the basis of underlying
14 factual determinations including (1) the scope and content of the prior art,
15 (2) any differences between the claimed subject matter and the prior art, and
16 (3) the level of skill in the art. *Graham v. John Deere Co.*, 383 U.S. 1, 17-
17 18 (1966). *See also KSR*, 550 U.S. at 407 (“While the sequence of these
18 questions might be reordered in any particular case, the [*Graham*] factors
19 continue to define the inquiry that controls.”)

20 Rejections on obviousness grounds cannot be sustained by mere
21 conclusory statements. Instead, there must be some articulated reasoning
22 with some rational underpinning to support the legal conclusion of
23 obviousness. *Id.* at 418 (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir.
24 2006)).

25 The agency tribunal must present a full and reasoned explanation of
26 its decision. The agency tribunal must set forth its findings and the grounds

1 thereof, as supported by the agency record, and explain its application of the
2 law to the found facts. *In re Lee*, 277 F.3d 1338, 1342 (Fed. Cir. 2002).

3
4 ANALYSIS

5 We are persuaded of error on the part of the Examiner by Appellants'
6 argument that the Examiner did not establish a proper case of prima facie
7 obviousness in rejecting claims 1-69 (App. Br. 21-40, Reply Br. 3-5). The
8 entire factual basis for the Examiner's rejection of the subject matter of
9 claims 1-69 is set forth on two pages (Ex. Ans. 4-5)¹. We agree with the
10 Examiner that the Description of the Related Art on pages 1-2 of the
11 Specification, and the description of ERP program 50 on pages 6-8 of the
12 Specification constitute admissions of prior art. However, the Examiner has
13 failed to set forth findings of fact detailing which portions of the Admitted
14 Prior Art correspond to the specific limitations of claims 1-69. By failing to
15 set forth such findings, this rejection does not satisfy the "scope and content
16 of the prior art" prong of the *Graham* analysis. Specifically, other than
17 identifying which pages of the Specification contain admitted prior art, the
18 Examiner has not set forth the scope and content of what technical details,
19 even generally, are contained in the prior art, and how they are applicable to
20 the claimed subject matter. Thus a proper case of prima facie obviousness
21 has not been established.

¹These rejections are copied almost verbatim from pages 2-4 of the final Office Action mailed October 4, 2007; pages 2-4 of the final Office Action mailed April 21, 2005; and pages 3-4 of the non-final Office Action mailed June 28, 2004.

1 Indeed, the entirety of the findings as to the scope and the content of
2 the Admitted Prior Art, as set forth by the Examiner, is a general allegation
3 that the Admitted Prior Art discloses everything that has not been set forth as
4 being disclosed by Johnson or Graves, without any specific findings as to
5 what the Admitted Prior Art actually discloses. Such “findings” are an
6 impermissible conclusory statement that falls well short of the standard that
7 requires that the rejection provide some articulated reasoning with some
8 rational underpinning to support the legal conclusion of obviousness, and be
9 full and reasoned. *See KSR*, 550 U.S. at 418; *In re Lee*, 277 F.3d at 1342-43.
10 Such articulated reasoning is necessary so that Appellants can clearly
11 understand and traverse specific alleged errors in the Examiner’s findings.
12 Without such guidance, the Appellants are left to guess at which portions of
13 the Admitted Prior Art correspond to which portions of claims 1-69, and
14 then respond to their own interpretation of what the Examiner meant. This
15 is especially true where Appellants have set forth in their Appeal Brief a
16 plethora of specific limitations in the claims that are allegedly not disclosed
17 by the prior art.

18 Regardless of whether the Admitted Prior Art actually discloses any
19 of these specific limitations, the Examiner has not properly responded to
20 these specific assertions, instead citing pages of case law without applying
21 them to specific factual situations. Accordingly, in balancing Appellants’
22 specific arguments that the Examiner has not shown how the Admitted Prior
23 Art discloses specific limitations, and the Examiner’s general allegations
24 that the Admitted Prior Art does disclose the specific limitations, we are
25 constrained to agree with the Appellants because the Examiner has failed to

1 provide a showing as to how specific disclosures of the Admitted Prior Art
2 even generally correspond to specific limitations of claims 1-69.

3
4 CONCLUSION OF LAW

5 On the record before us, Appellants have shown that the Examiner
6 erred in finding obvious the subject matter of claims 1-69.

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8 REVERSED

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